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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/734,837	12/12/2003	Vincent T. Kozyrski	6611-62-1	1955
50811	7590	06/30/2008		
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			ART UNIT 3721	PAPER NUMBER
			MAIL DATE 06/30/2008	DELIVERY MODE PAPER

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UNITED STATES PATENT AND TRADEMARK OFFICE

Ex parte VINCENT T. KOZYRSKI

Decided: June 30, 2008

McCARTHY, *Administrative Patent Judge.*

STATEMENT OF THE CASE

1 The claims on appeal relate to a stack of framing material hangers of a
2 type suited for automatic installation. (*See* Spec. 1, ¶ 0004). Independent
3 claim 26 is typical of the appealed claims and reads as follows:

4
5 26. A stack of hangers for framing material,
6 comprising:
7 a plurality of hangers, each having a
8 web extending between a pair of legs, which legs
9 extend outwardly from the web in a direction
10 substantially perpendicular to the web, and a
11 barbed member extending out from each leg; and
12 one or more shearable tabs extending
13 between, and attaching, adjacent ones of the
14 plurality of hangers.
15

16 Claims 26-31 and 37-39 stand rejected under 35 U.S.C. § 102(b)
17 (2002) as being anticipated by Okamura (U.S. Patent 4,339,983). Claims
18 26-31 and 37-39 also stand rejected under 35 U.S.C. § 103(a) (2002) as
19 being unpatentable over Lorincz (4,728,237) in view of Okamura.

20 We AFFIRM the rejections of claims 26-29 and 31. We REVERSE
21 the rejections of claims 30 and 37-39.

22 23 ISSUES

24 The issue in this appeal is whether the Examiner erred in rejecting
25 claims 26-31 and 37-39 under §§ 102(b) and 103(a). This issue turns, in
26 part, on whether Okamura alone discloses, or the combined teachings of
27 Lorincz and Okamura render obvious, a stack of *hangers* for framing
28 material having the limitations of claim 26.
29

FINDINGS OF FACT

The record supports the following findings of fact (“FF”) by a preponderance of the evidence.

1. Okamura discloses a clamping device including a base portion; pivotal pieces connected symmetrically to the base portion by thin hinges; and piercing pieces. (Okamura, col. 3, ll. 30-37 and 51-57.)

2. In order to seal a package made from corrugated board, one places the clamping device over a junction between two flap covers. One then turns the pivotal pieces downwardly and presses the piercing pieces through the flap covers. (Okamura, col. 3, l. 58 – col. 4, l. 1.)

3. The reference teaches that if the flap covers are formed of a material other than corrugated board, the flap covers “should preferably be formed with suitable openings which permit reception of the piercing pieces *15a* and *15b*.” (Okamura, col. 4, ll. 35-41.)

4. Okamura discloses an embodiment of the clamping devices connected by a pair of wire-like connecting members fixed to the under surfaces of the base portions of the clamping devices to form a stack. Okamura teaches that this arrangement “is particularly advantageous in that a continuous supply of the clamping devices is possible for efficient operation when the clamping devices are to be automatically applied to packing cases and the like by a mounting apparatus” (Okamura, col. 6, ll. 5-21.)

5. Lorincz teaches a hanger having a web with sawtooth-like edges and rearwardly turned shanks. “[T]he shanks *42*, *43* enhance the resistance of the hanger *40* to separation when driven into a picture frame.”

(Lorincz, col. 5, ll. 1-7 and 10-12.) Lorincz's Fig. 5 shows these shanks with alternating lands and grooves forming barbs.

PRINCIPLES OF LAW

“To anticipate a claim, a prior art reference must disclose every limitation of the claimed invention, either explicitly or inherently.” *In re Schreiber*, 128 F.3d 1473, 1477 (Fed. Cir. 1997). A claim is unpatentable for obviousness under 35 U.S.C. § 103(a) if “the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.” In *Graham v. John Deere Co.*, 383 U.S. 1 (1966), the Supreme Court set out factors to be considered in determining whether claimed subject matter would have been obvious:

Under § 103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background, the obviousness or nonobviousness of the subject matter is determined.

Id., 383 U.S. at 17.

ANALYSIS

A. *The Rejection of Claims 26-31 and 37-39 Under § 102(b)
as Being Anticipated by Okamura*

1. *Claims 26, 28, and 31*

The Appellant contends that the preamble of claim 26 recites a stack of hangers and that Okamura does not disclose hangers. (App. Br. 5.) More specifically, the Appellant contends that Okamura's clamping device cannot serve as a hanger because it is formed of a flexible material that cannot penetrate anything harder than corrugated board and because, when mounted, the base portion of the clamping device is flush with the surface to which it is attached. (App. Br. 6.)

Given its broadest reasonable interpretation, a "hanger" is any structure by which an object or garment can hang. (*See* Ans. 6). We agree with the Examiner that "the plastic device of Okamura is capable of hanging a paper or cardboard framed article." (Ans. 8). For example, one may hang a paper poster or a cardboard-matted picture on a wall by aligning the poster or mat between a clamping device and a pair of pre-drilled holes in the wall and then pressing the piercing portions of the device through the poster or mat into pre-drilled holes. (*Cf.* FF 1-3 (describing properties of Okamura's clamping devices)). Hence, Okamura's clamping device is a hanger—that is, the device is capable of hanging an article.

On the record before us, the Appellant has not shown that the Examiner erred in rejecting independent claim 26 or dependent claims 28 and 31 under § 102(b).

2. *Claim 27*

The Appellant argues that Okamura's clamping devices lack shoulder surfaces spaced apart from the base portion such that the barbed portions (that is, the piercing pieces) extend out from each respective leg (that is, the pivotal pieces) adjacent the shoulder surface. (App. Br. 7.) The Examiner finds (Ans. 3), and we agree, that each of the piercing pieces of one particular embodiment of Okamura's clamping devices is provided with a stepped recess at its base portion close to the under surfaces of the pivotal pieces. (Okamura, col. 5, ll. 32-40.) The stepped recess defines a shoulder surface which faces the respective pivotal piece and which is spaced apart from the base portion. (See Okamura, Fig. 15.) Each of the piercing pieces extends out from a respective pivotal piece adjacent this shoulder surface in the sense that the piercing pieces meet the pivotal pieces along surfaces "nearby but not touching" the shoulder surfaces. (See Okamura, Fig. 15; see also WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY at 379 (G. & C. Merriam Co. 1971) ("adjacent," definition 1a.)) On the record before us, the Appellant has not shown that the Examiner erred in rejecting claim 27 under § 102(b).

3. *Claim 29*

The Appellant contends that Okamura fails to disclose "tabs each hav[ing] a feature that facilitates shearing of the tab." (App. Br. 7.) The Appellant does not appear to contest that Okamura's "wire-type connecting members" (see FF 4) are "tabs." The structure of the "wire-type connecting members" is a feature that facilitates shearing of the tab at least insofar as an automatic mounting apparatus cuts off the wire-like connecting portions

1 when fixing the clamping devices to flap covers. (*See* Okamura, col. 7, ll.
2 47-53.) On the record before us, the Appellant has not shown that the
3 Examiner erred in rejecting claim 29 under § 102(b).

4
5 *4. Claim 30*

6 The Appellant contends that Okamura fails to disclose “a stack of
7 hangers wherein the hangers are oriented within the stack such that legs of
8 the hangers within the stack are substantially aligned along a single
9 line.” (App. Br. 7.) These elements are exemplified in the stack of hangers
10 22 illustrated in Fig. 3 of the present Specification. The only stack disclosed
11 in Okamura is one disclosed in Fig. 19 of the reference, in which the legs or
12 pivotal pieces of the clamping devices are substantially aligned along two
13 lines. On the record before us, the Appellant has shown that the Examiner
14 erred in rejecting claim 30 under § 102(b).

15
16 *5. Claims 37-39*

17 The Appellant contends that Okamura fails to disclose shearable tabs
18 which are coplanar with the web. (App. Br. 8-9.) Instead, Okamura
19 discloses “a pair of wire-like connecting members 23 suitably fixed to the
20 under surfaces of the base portions.” (Okamura, col. 6, ll. 7-15.) Okamura’s
21 Fig. 19 includes the only illustration of the “wire-like connecting members.”
22 The wire-like connecting members as illustrated in Fig. 19 do not appear to
23 be co-planar with the webs or base portions of the clamping members. One
24 can see the lateral sides of the base portions of the clamping members over
25 the “wire-like connecting members” in that drawing figure. On the record

1 before us, the Appellant has shown that the Examiner erred in rejecting
2 independent claim 37 and dependent claims 38 and 39 under § 102(b).

3

4 *B. The Rejection of Claims 26-31 and 37-39 Under § 103(a)*
5 *as Being Unpatentable Over Lorincz in View of*
6 *Okamura*

7 1. *Claims 26-28 and 31*

8 The Appellant contends that the teachings of Lorincz and Okamura
9 cannot be combined because Okamura is non-analogous art. (App. Br. 11.)
10 The established precedent of our reviewing court sets up a two-fold test for
11 determining whether art is analogous: “First, we decide if the reference is
12 within the field of the inventor’s endeavor. If it is not, we proceed to
13 determine whether the reference is reasonably pertinent to the particular
14 problem with which the inventor was involved.” *In re Deminski*, 796 F.2d
15 436, 442 (Fed. Cir. 1986). A recent U.S. Supreme Court opinion hints at a
16 broader test: “Under the correct analysis, any need or problem known in the
17 field of endeavor at the time of invention and addressed by the patent can
18 provide a reason for combining the elements in the manner claimed.” *KSR*
19 *Int’l, Inc. v. Teleflex Inc.*, 127 S.Ct. 1727, 1742 (2007). Even assuming for
20 purposes of this appeal only that Okamura were not within the field of the
21 applicant’s endeavor, we note that Okamura (*see* FF 4), like the present
22 Specification (*see* Spec. 1, ¶ 0004), addresses the same particular problem of
23 forming hangers or fasteners into a stack to provide a continuous supply of
24 the hangers or fasteners to an automatic mounting apparatus. On the record
25 before us, the Appellant has not shown that the Examiner erred in rejecting
26 claims 26-28 and 31 under § 103(a).

27

1 2. *Claim 29*

2 On the record before us, the Appellant has not shown that the
3 Examiner erred in rejecting claim 29 under § 103(a) as being unpatentable
4 over Lorincz in view of Okamura for the same reason we sustained the
5 rejection of this claim under § 102(b) as being anticipated by Okamura.
6

7 3. *Claims 30 and 37-39*

8 On the record before us, the Appellant has shown that the Examiner
9 erred in rejecting independent claim 37 and dependent claims 30, 38, and 39
10 for the same reasons we did not sustain the rejections of these claims under
11 § 102(b) as being anticipated by Okamura. The combined teachings of
12 Lorincz and Okamura do not overcome the deficiencies which we noted in
13 the disclosure of Okamura.
14

15 CONCLUSIONS

16 On the record before us, the Appellant has not shown that the
17 Examiner erred in rejecting claims 26-29 and 31 either under § 102(b) as
18 being anticipated by Okamura or under § 103(a) as being unpatentable over
19 Lorincz in view of Okamura. The Appellant has shown that the Examiner
20 erred in rejecting claims 30 and 37-39 on each of those grounds.
21

22 DECISION

23 We AFFIRM the Examiner's rejections of claims 26-29 and 31. We
24 REVERSE the rejections of claim 30 and 37-39.

